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No. 75-1099

In the

Supreme Court of the United States

OCTOBER TERM, 1975

PEOPLE ex rel. WILLIAM J. SCOTT, Attorney General and MICHAEL J. HOWLETT, Secretary of State of the State of Illinois,

Petitioners,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, an Illinois Corporation; ILLINOIS CENTRAL INDUSTRIES, INC., a Delaware Corporation; ILLINOIS CENTER CORPORATION, a Texas Corporation; and ILLINOIS CENTER PLAZA VENTURE, a partnership,

Respondents.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

PAGE

Statutes Involved 1

Questions Presented 2

Statement of the Case 2

Argument 3

Conclusion 7

CITATIONS

California Diversified Promotions, Inc. v. *Musick*, 505 F.2d 278 (CA 5, 1974) 5

Great Lakes Dredge & Dock Co. v. *Huffman*, 219 U.S. 293 (1943) 3, 4

Hargrave v. *McKinney*, 413 F.2d 320 (CA 5, 1969) .. 4

Louisville & Nashville Railroad Co. v. *Mottley*, 211 U.S. 149 (1908) 5

Mansfield, C. & L. M. R. Co. v. *Swan*, 111 U.S. 379 (1884) 4, 5

Samuels v. *Mackell*, 401 U.S. 66 (1971) 3

Seaboard Airline Railroad Co. v. *Daniel*, 333 U.S. 118 (1948) 2, 3, 6

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STATUTES INVOLVED

United States Code, Title 28:

§1341. Taxes by States

"The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law where a plain, speedy and efficient remedy may be had in the courts of such state."

QUESTIONS PRESENTED

1. Was the court below correct in directing dismissal of the Illinois Central complaint under authority of 28 U.S.C. 1341?
2. Was the court below correct in *sua sponte* directing dismissal of the Illinois Central complaint for lack of jurisdiction without requiring that the issues be briefed and argued?
3. Was the court below correct, under authority of *Seaboard Airline Railroad Co.* v. *Daniel,* 333 U.S. 118 (1948), in holding that federal jurisdiction did not attach to the Complaint?

STATEMENT OF THE CASE

The statement of the case set forth by the Court of Appeals (Petitioners' Appendix A, Pages A2, A3) is accurate. Petitioners' statement of the case has material omissions and misstatements which require our reference to the Court of Appeals' statement of the case.

This respondent, Illinois Center Plaza Venture ("Plaza Venture"), raised the issue of lack of federal jurisdiction in both the District Court and on appeal (Petitioners' Appendix A, Page A4, Footnote 2) on authority of *Seaboard Airline Railroad Co.* v. *Daniel,* 333 U.S. 118 (1948).

The Court of Appeals unanimously held *sua sponte* that the complaint should not be entertained by the District Court under the restraint of 28 U.S.C. 1341 and that under *Seaboard* federal jurisdiction did not attach to the Complaint.

ARGUMENT

I.

A. 28 U.S.C. 1341 precludes federal jurisdiction of the Illinois Central Complaint seeking a declaration that it does not owe an Illinois Corporate Franchise Tax.

The Complaint prayed for a judgment "that plaintiff does not owe any franchise tax to the State of Illinois for 1973 or any subsequent years" (Petitioners' Appendix B, P. B5). Section 1341 applies whether injunctive or declaratory relief against the state tax is sought by the plaintiff. *Great Lakes Dredge & Dock Co.* v. *Huffman,* 319 U.S. 293 (1943). Petitioners question the continuing validity of *Great Lakes,* characterizing that decision "of questionable persuasion since the language of the Tax Injunction Act has subsequently been amended."* In 1971 the Supreme Court in *Samuels* v. *Mackell,* 401 U.S. 66, reaffirmed *Great Lakes* saying (P. 71):

> "The continuing validity of the Court's holding in the Great Lakes case has been repeatedly recognized and reaffirmed by this court."

and that the same considerations for withholding injunctive relief under §1341 will make declaratory relief inappropriate, the Court saying (P. 69):

> "The question presented here is whether under ordinary circumstances *the same considerations that require the withholding of injunctive relief will make declaratory relief equally inappropriate.* The question is not, however, a novel one. It was presented and

* in 1948

> fully considered by this Court in *Great Lakes Co.* v. *Huffman,* 319 U.S. 293, 87 L. Ed. 1407, 63 S. Ct. 1070 (1943). We find the reasoning of this Court in the Great Lakes case fully persuasive and think that its holding is controlling here." [Emphasis added.]

This decision disposes of Petitioners' argument that § 1341 is not applicable where declaratory relief is sought.

Hargrave v. *McKinney,* 413 F. 2d 320 (CA 5, 1969), relied upon by Petitioners, involved an action to *order the collection* of state taxes. Section 1341 relates only to the "enjoining, suspending or restraining the assessment, levy or collection of any tax under state law . . .". Obviously this decision, not involving §1341, is of no support to the Petitioners.

B. The Court of Appeals properly directed the dismissal of the Complaint sua sponte without requiring that the issues be briefed and argued.

Petitioners question the right of the Court of Appeals to direct dismissal of the Illinois Central Complaint *sua sponte* without briefs and argument on the issue. The courts of the United States have the power to deny their own jurisdiction. In *Mansfield C. & L. M. R. Co.* v. *Swan,* 111 U.S. 379 (1884), the Supreme Court, on its own motion, reversed the judgment for plaintiffs stating (PP. 381-382):

> "An examination of the record, however, discloses that the Circuit Court had no jurisdiction to try the action; and as, for this reason, we are constrained to reverse the judgment, we have not deemed it within our province to consider any other questions involved in it . . .
>
> "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the

> record comes. This question the court is bound *to ask and answer for itself, even when not otherwise suggested and without respect to the relation of the parties to it.*" [Emphasis added.]

To the same effect is *Louisville & Nashville Railroad Co.* v. *Mottley,* 211 U.S. 149 (1908), where the Supreme Court reversed and remanded a decree of the District Court with instructions to dismiss for want of jurisdiction.

Petitioners rely upon *California Diversified Promotions, Inc.* v. *Musick,* 505 F. 2d 278 (CA 9, 1974) to support their argument that a hearing was required before the Court of Appeals could direct dismissal of the Illinois Central complaint *sua sponte. California Diversified Promotions* does not support the Petitioners. That case did not involve a dismissal *sua sponte* for lack of jurisdiction. The court recognized its authority to dismiss *sua sponte* where jurisdiction is not present, saying at Page 280:

> "It has long been held that a judge can dismiss sua sponte for lack of jurisdiction." Citing *Mansfield C. & L. M. R. Co.* v. *Swan,* 111 U.S. 379 (1884) and other cases.

No jurisdiction being present in the Illinois Central Complaint, *California Diversified Promotions* is inapplicable.

II.

The Court of Appeals was correct, under authority of Seaboard Airline Railroad Co. v. Daniel, 333 U.S. 118 (1948), in holding that federal jurisdiction did not attach to the Complaint.

Petitioners argue that federal jurisdiction attaches to the Complaint under Section 5 of the Interstate Commerce Act. The Court of Appeals disposed of that argument (Petitioners' Appendix A, Page A6) saying:

> "The State of Illinois parties have argued that federal jurisdiction attached because of the approval of the Plan of Reorganization by the Interstate Commerce Commission under Section 5 of the Act. This argument was disposed of by the Supreme Court in *Seaboard Air Line Railroad Co.* v. *Daniel,* 333 U.S. 118, 122-23 (1948)."

The Complaint which sought a declaration of the Court that it had been dissolved pursuant to a Plan of Reorganization approved by the Interstate Commerce Commission (Petitioners' Appendix B, Page B4) did not create federal jurisdiction. Justice Black speaking for a unanimous Supreme Court in *Seaboard* said at p. 123:

> "While the action does involve the scope and validity of a Commission order, the relief requested in the complaint was the removal of an obstruction to the railroad's obedience to the order, not its suspension or annulment. Nor did the answer seek to have the enforcement of the order enjoined . . .
>
> "The appellant was in this dilemma. Federal law required it to obey the order so long as it remained in effect . . . On the other hand, South Carolina statutes provided penalties for obedience to the order, which South Carolina officials asserted were enforceable against appellant despite the Commission's order. There was thus a bona fide controversy between appellant and the state officials over the validity of the order. Appellant wanted to obey the order; the state officials insisted appellant must obey their statutes instead. *Federal district courts have not been granted special jurisdiction to review and confirm orders of the Commission at the suit of railroads wishing to obey such orders.*" [Emphasis added.]

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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